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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. MATTHEW THOMAS MCCARTHY, Defendant and Appellant.	A154381 (Mendocino County Super. Ct. No. SCUK-CRCR1684812)

Matthew Thomas McCarthy appeals after pleading guilty to multiple counts of committing a lewd act against a child under 14 years of age (Pen. Code, § 288, subd. (a)).[1] He argues the trial court provided insufficient warnings before allowing appellant to represent himself, erred in subsequently refusing to allow appellant to substitute retained counsel and continue the trial date, and abused its discretion in denying appellant's motion to withdraw his guilty plea. We affirm.

BACKGROUND[2]

In May 2016, appellant was charged with four counts of committing a lewd act against a child under 14 years of age (§ 288, subd. (a)), with the special allegations that appellant had previously been convicted of a section 288, subdivision (a) offense (§ 667.61, subds. (a), (d)), and that the offense was committed against multiple victims

[1] All undesignated section references are to the Penal Code.

[2] Additional background facts about the three challenged rulings are set forth in the discussion section below.

(§ 667.61, subds. (b), (e)). Appellant was further charged with two counts of oral copulation with a person under 16 years of age (former § 288a, subd. (b)(2)), furnishing a narcotic to a minor (Health & Saf. Code, § 11353, subd. (c)), furnishing marijuana to a minor over 14 years of age (Health & Saf. Code, § 11361, subd. (b)), possession of child pornography (§ 311.11, subd. (a)), possession of a firearm by a felon (§ 29800, subd. (a)(1)), and animal cruelty (§ 597, subd. (b)), and a prior strike conviction was alleged (§§ 1170.12, 667). According to the preliminary hearing testimony, the section 288 charges arose from allegations that appellant molested his daughter and his then-girlfriend's daughter.[3]

Appellant was initially represented by the public defender's office. In late April 2017, a week before the scheduled trial date, appellant requested a new attorney and the court held a *Marsden* hearing.[4] At the conclusion of the hearing, the court denied his request for a new attorney, gave him a "*Faretta*[5] waiver form," and cautioned that self-representation is "a bad idea." At the subsequent *Faretta* hearing, appellant filed his completed *Faretta* form and, following admonishments by the trial court, waived his right to counsel. The trial court continued the May trial date, and trial was subsequently set for September.

Over multiple hearings in the following months, the trial court worked diligently with the prosecutor and public defender to ensure that appellant had received all the discovery he was legally able to possess. During this time, appellant noted the inadequacy of the jail law library, the slow process for obtaining legal materials in jail, and his limited telephone access. In June, the court offered to appoint appellant an investigator and, after some difficulty finding an investigator who would accept the appointment, the trial court appointed an investigator in late July.

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[3] Further details about the underlying facts are not relevant to this appeal.

[4] *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*). Appellant had made another *Marsden* motion earlier that month, which was denied.

[5] *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*).

In August, appellant filed a motion to continue the trial date on the ground that a substantial amount of investigative work had yet to be done. The court granted the motion and trial was set for January 23, 2018. In September, appellant requested advisory counsel, and the court appointed advisory counsel later that month.

On January 2, 2018, appellant filed a motion to continue accompanied by a declaration from his investigator averring that the investigation was not yet complete, appellant had provided him with the names of people he wanted to call as witnesses but no other information, the investigator had been able to locate two witnesses but had not yet interviewed them because they were located out of the area, and the investigator was currently carrying a very large case load.[6] At the January 4 hearing, the trial court denied the motion, noting the case had been set for trial several times and the court had previously warned appellant it was not inclined to continue it again, the motion did not include "any specific information . . . as to [a] specific person that he wanted to contact or subpoena who he has been unable to contact or subpoena, I have no information as to what that person may or may not be able to provide," and appellant "had ample time to prepare any real things that needed to be prepared."

On January 23, the first day of trial, appellant informed the court he had retained an attorney the previous weekend and requested substitution of counsel. Appellant's retained counsel stated he did not know when he would be ready for trial, noting he had two trials in the coming weeks and would need at least two weeks to prepare after these trials had concluded. The trial court ruled that if the "request to substitute is appended to a request for continuance, it is denied."

The following morning, appellant asked to speak privately with the prosecutor and appellant's advisory counsel during a break in the proceedings. Upon returning to court following these discussions, the parties informed the court they had reached a plea agreement whereby appellant would receive a stipulated sentence of 35 years to life;

[6] In December, appellant had filed a motion to continue that was not accompanied by a declaration from his investigator, which the trial court denied without prejudice.

however, appellant would only agree if the court was willing to issue a certificate of probable cause authorizing his appeal of the court's denial of his motion to continue and request to substitute counsel. The trial court stated it was willing to do so. Appellant pled guilty to the four section 288, subdivision (a), counts and admitted he had previously been convicted of a section 288, subdivision (a), offense; the remaining counts and allegations were dismissed. Before sentencing, appellant substituted in counsel and filed a motion to withdraw his plea, which the trial court denied following an evidentiary hearing.

Appellant was sentenced to an aggregate term of 35 years to life. The trial court issued a certificate of probable cause, and this appeal followed.

DISCUSSION

I. Faretta *Warnings*

Appellant first argues the trial court's *Faretta* warnings were inadequate. We disagree.

A. *Additional Background*

Appellant completed a form *Faretta* waiver, which included a lengthy list of the "dangers and disadvantages" of self-representation. (Capitalization altered.) Appellant wrote on the form that he was 48 years old, a high school graduate, and worked as a mechanic for his "whole life."

In advance of the *Faretta* hearing, appellant's attorney filed a declaration averring that appellant "is well-spoken and has no difficulty communicating about his case," "seems to understand the charges arrayed against him, and appears to comprehend the potential exposure should he be found guilty at trial," "has while in custody researched legal issues in his case," filed a habeas petition and section 995 motion without counsel's help, and "is capable of understanding the legal procedures he would face if he were to proceed *pro se*." Counsel also averred: "I have thoroughly advised [appellant] about the facts, charges, potential exposure, and the relevant procedures in this case. I have also advised [appellant] about the dangers of self-representation, and his constitutional right to it."

At the *Faretta* hearing, the trial court carefully reviewed the counts and allegations in the information and confirmed that appellant understood that his potential aggregate sentence was 200 years to life indeterminate and 27 years, four months, determinate. The court provided appellant with a copy of the information and appellant stated that he had "listened very closely" to the court's review of the charges and the maximum penalty. The court also reviewed the written *Faretta* waiver with appellant and confirmed that appellant did not have difficulty reading or understanding the form, understood his constitutional right to counsel, and understood that if he proceeded in propria persona he "may not be able to retract that at a later time." The court confirmed that appellant understood multiple dangers and disadvantages of self-representation, including that he would not receive any special treatment, his "ability to investigate, research, prepare the defense, move around the courtroom and all is going to be limited by the fact that you're in custody," the prosecution will "have an experienced lawyer on their side and you're basically going to be on your own if you do this," and he will not be able to make an ineffective assistance of counsel claim on appeal.

The court informed appellant that "it's the court's advice and recommendation that you not represent yourself and that you accept counsel as appointed by the court," noting that appellant's public defender is "a skilled attorney" who "was and is adequately prepared to go forward with your case." The court told appellant, "Candidly, this looks to me like a real mistake. You're creating some disadvantages for yourself that are going to impair your ability to have the best defense available to you." Appellant confirmed his request for self-representation was unequivocal and the court found the request was knowing and intelligent.

The court questioned whether the request was made with the intent to delay trial, finding it "a really tough call" and noting the delay would be "really disruptive to the administration of justice." However, the court concluded "I don't think I can make the finding based on what I know, with the requisite degree of uncertainty that he's doing this for the purpose of delay. And for that reason, I am going to grant his motion to represent himself."

B. *Analysis*

"As established by the high court in *Faretta*, a defendant has a federal constitutional right to the assistance of counsel during all critical stages of a criminal prosecution. [Citations.] A defendant may nonetheless waive this right and personally represent himself or herself, as long as the defendant's waiver of the right to counsel is valid. An effective waiver requires that the defendant possess the mental capacity to comprehend the nature and object of the proceedings against him or her, and waive the right knowingly and voluntarily. [Citations.] There is no prescribed script or admonition that trial courts must use to warn a defendant of the perils of self-representation. But the record as a whole must establish that the defendant understood the 'dangers and disadvantages' of waiving the right to counsel, including the risks and intricacies of the case. [Citations.] If a defendant validly waives the right to counsel, a trial court must grant the request for self-representation. [Citation.] We review a *Faretta* waiver de novo, examining the entire record to determine the validity of a defendant's waiver. [¶] In determining the validity of a trial court's decision to permit the exercise of a defendant's *Faretta* right, we have treated the [following] suggested advisements and inquiries . . . as a useful reference for courts to ensure the knowing and voluntary waiver of counsel . . . : (1) ensuring the defendant's awareness of the ' "dangers and disadvantages" ' associated with self-representation; (2) inquiring into the defendant's intellectual capacity; and (3) informing the defendant that he or she cannot later claim inadequacy of representation." (*People v. Daniels* (2017) 3 Cal.5th 961, 977–978 (*Daniels*) [lead opn. of Cuellar, J.].)

The trial court provided appellant with lengthy, detailed warnings, both in oral and written form. Appellant argues the court must do more than provide "a rote, abstract recitation of the dangers" and instead must "plumb the depths of appellant's actual understanding." For example, the court admonished appellant that his "ability to investigate, research, prepare the defense, move around the courtroom and all is going to be limited by the fact that you're in custody," and although appellant confirmed at the time that he understood this, he now argues the trial court failed to determine "what did appellant truly 'understand' . . . ?" Appellant cites no authority that trial courts must

affirmatively determine the extent of a defendant's understanding (absent unusual circumstances indicating such inquiry is necessary to determine whether the waiver is knowing and voluntary). Indeed, our Supreme Court has rejected a defendant's argument that the trial court failed to conduct a " 'searching inquiry,' " finding that when a defendant has been provided with adequate warnings, "[n]o more [i]s required." (*People v. Blair* (2005) 36 Cal.4th 686, 709–710, overruled on another ground in *People v. Black* (2014) 58 Cal.4th 912, 919.) To the extent appellant contends the court failed to sufficiently warn him about various limitations related to his custodial status, this argument has also been rejected: "Defendant does not cite any authority establishing that the court must advise a defendant seeking pro se status of each limitation upon his ability to act effectively as counsel that will flow from security concerns and facility limitations, and we have stated, to the contrary, that '[a]s long as the record as a whole shows that the defendant understood the dangers of self-representation, no particular form of warning is required.' " (*People v. Jenkins* (2000) 22 Cal.4th 900, 1042.)

Similarly, appellant contends that, with respect to the admonition that he will be unable to raise an ineffective assistance of counsel claim, "there was no depth to the inquiry of appellant's understanding of what was on the line." The trial court warned appellant that "if a lawyer messes up your case, basically, in trying it, you can argue on appeal that you had ineffective assistance of counsel. If you do that yourself, there's no recovery for that." To elaborate, the court read from a recent California Supreme Court case: " 'The unusual circumstances of this case present a cautionary tale for defendants who choose to represent themselves, for in the end the defendant has no one but himself to blame for any failure to present a defense.' " (Quoting *People v. Espinoza* (2016) 1 Cal.5th 61, 64.) Appellant also initialed the following written *Faretta* form advisement: "I understand that in the event of a conviction and an appeal, by acting as my own attorney, I give up and waive as a possible ground of appeal my constitutional right to effective assistance of counsel. However, if I am represented by an attorney, I may complain on appeal that he or she did not effectively represent me." These oral and

written admonishments provided ample warning to appellant. As discussed above, no more was required.

Appellant contrasts the colloquy in *Daniels,* pointing to the trial court's warning that "it is 'never wise' for an unskilled person to represent himself, and that 'it is said that he who represents himself is a fool' "; "several inquiries about [the defendant's] mental state that day"; and offer to appoint advisory counsel. (*Daniels, supra,* 3 Cal.5th at pp. 975–976 [lead opn. of Cuellar, J.].) We see no material difference from the colloquy here. The trial court warned appellant, "I think it's a bad idea to represent yourself"; "it's the court's advice and recommendation that you not represent yourself"; "this looks to me like a real mistake. You're creating some disadvantages for yourself that are going to impair your ability to have the best defense available to you." Although the court did not make specific inquiries into appellant's mental state, *Daniels* does not suggest such an inquiry is necessary where, as here, there is no indication in the record that the defendant's mental state is inadequate. The trial court did not offer appellant advisory counsel at the *Faretta* hearing, but such an offer is not a necessary part of the *Faretta* warnings. (*People v. Harrison* (2013) 215 Cal.App.4th 647, 657 [" 'Because there is no right to have a standby counsel appointed during self-representation, it follows that there is no right to have the court advise about the possibilities of standby counsel during the *Faretta* colloquy.' [Citation.] We find this reasoning persuasive and equally applicable in the context of advisory counsel."].)

Appellant relies on *People v. Ruffin* (2017) 12 Cal.App.5th 536 (*Ruffin*). In *Ruffin,* the Court of Appeal held *Faretta* warnings inadequate where the trial court's "inquiry consisted of asking whether appellant initialed and signed the [written *Faretta* advisement] form (he did) and whether he had any questions (he did not). The court did not ascertain on the record that defendant read and understood the written *Faretta* form. The court also failed to inquire about ambiguities in appellant's responses regarding his understanding of the nature of the charges against him. And nothing in the record—not the oral proceedings or the written *Faretta* form—advised defendant of the penal consequences of conviction—27-years-to-life in state prison." (*Ruffin,* at pp. 539–540.)

In stark contrast, the trial court confirmed appellant read the *Faretta* form, orally reviewed multiple dangers and disadvantages with appellant, provided him with a copy of the information, and carefully reviewed the charges and maximum potential sentence. Although appellant criticizes the trial court's explanation of the requisite mental state for the charged crimes and failure to probe appellant's understanding of the mental states and defenses, reviewing the elements of the charged crime or possible defenses is not necessary. (*Daniels, supra,* 3 Cal.5th at p. 979 [lead opn. of Cuellar, J.] ["We reject Daniels's argument that the court's inquiry was inadequate because it did not review the elements of the charges, possible defenses, or possible punishments besides the death penalty—or confirm that counsel had done so with Daniels."].)

Appellant contends "his raw aptitude to handle a serious case like his own and draw together the pieces of a defense was insufficient," citing his high school education, occupation as a mechanic, and the fact that he had never represented himself before and had no apparent experience with civil or criminal litigation. Appellant cites no authority that a defendant must demonstrate any particular ability beyond "the mental capacity to comprehend the nature and object of the proceedings against him or her." (*Daniels, supra,* 3 Cal.5th at p. 977 [lead opn. of Cuellar, J.].) To the contrary, "the likelihood or actuality of a poor performance by a defendant acting in propria persona [does not] defeat the federal self-representation right." (*People v. Taylor* (2009) 47 Cal.4th 850, 866.)

Finally, we reject appellant's assertion that he was "essentially forced to opt for self-representation" after the trial court's denial of his *Marsden* motion. Appellant does not argue on appeal that the court's denial of his *Marsden* motion was error and has thus abandoned any such claim. (See *Behr v. Redmond* (2011) 193 Cal.App.4th 517, 538 [appellant's "failure to brief the . . . issue constitutes a waiver or abandonment of the issue on appeal"].) The proper denial of a *Marsden* motion does not "force[]" a defendant into self-representation. Similarly, appellant complains about the written *Faretta* form's admonishment that "there are excellent trial attorneys in the office of the Mendocino County Public Defender's Office," arguing that "to essentially 'force' a *Faretta* applicant to initial as to the truth of this assertion is grossly wrong," particularly

in light of appellant's *Marsden* motions, and thus "skews the 'knowing and intelligent' aspect of the waiver of counsel." Again, appellant has abandoned any claim that the *Marsden* denial was error, and we fail to see how the challenged admonition undermines the trial court's finding that appellant's *Faretta* waiver was knowing and intelligent.

II. *Motion to Substitute Counsel and Continue Trial*

Appellant next contends the trial court erred in refusing his request, made on the first day of trial, to substitute retained counsel and continue the trial. We disagree.

A. *Additional Background*

Appellant told the court he wanted to substitute counsel "because I had not had my investigation done, I could not complete it and I am not ready to go to trial." Appellant's retained counsel represented that appellant stated the continuances prior to his self-representation "were all based upon the instance and recommendations by his predecessor attorneys," he chose to represent himself because of "the irreconcilable differences he had with his former lawyers," and only when the prosecutor presented him with a written offer of 35 years to life the previous Friday did "the realization set in that is this could be a life sentence for him. This is a real serious, serious matter. And then he began to realize he could not do the trial himself, that it would be impossible for him to select a jury and to then cross-examine the witnesses, one of which is -- one of the victims is his own daughter. [¶] And it was then that he contacted his family, reached out to them for the necessary funds . . . ."

The prosecutor argued that appellant knew long before the previous Friday that it was a serious case, noting an offer with "a life tail" had been made to appellant in November 2016. The prosecutor further argued that appellant became self-represented in April 2017, had "months upon months" to prepare for trial and "at any time along the way could have retained private counsel. But at this point one of our victims in this case is pregnant, has been in the hospital, she's already said today she is frustrated with the court system because she does not know what the Court's going to do this morning."

The trial court noted appellant's *Faretta* request was made "just before trial" when his public defender "was ready to proceed to trial," and the court was "pretty much

convinced that the firing of the public defender, as it were, in this case was a tactic that was exercised by [appellant] to delay his trial." Witnesses had already experienced hardship from the continuances "by repeatedly having to adjust work, school, family schedules around rescheduled court dates." The court found "it is seriously disruptive to the Court to have a proceeding, you know, where twice we basically are placed in the same position, one, where the defendant wants to go from being represented by an attorney to representing himself and winding up having the matter which was really close to trial [continued] . . . . And then, you know, have the matter come up for trial again with the defendant representing himself and then have him say, No, now I want to be represented by counsel . . . ." The court continued, "the timeliness of this is of great concern to me. I don't know why if [appellant] was going do this, he didn't do this some time well before this last trial date." The court concluded, "if the . . . request to substitute is appended to a request for continuance, it is denied."

B. *Analysis*

In *People v. Lawrence* (2009) 46 Cal.4th 186 (*Lawrence*), our Supreme Court explained that, when considering a mid-trial request to revoke a *Faretta* waiver, " ' "it is the totality of the facts and circumstances which the trial court must consider in exercising its discretion as to whether or not to permit a defendant to again change his mind regarding representation in midtrial." ' " (*Lawrence,* at p. 192.) Consideration of the following factors " ' "is obviously relevant and helpful to a trial court in resolving the issue," ' " although the factors " ' "are not absolutes" ' ": " '(1) defendant's prior history in the substitution of counsel and in the desire to change from self-representation to counsel-representation, (2) the reasons set forth for the request, (3) the length and stage of the trial proceedings, (4) disruption or delay which reasonably might be expected to ensue from the granting of such motion, and (5) the likelihood of defendant's effectiveness in defending against the charges if required to continue to act as his own attorney.' " (*Ibid.*) In *Lawrence,* the Supreme Court found no abuse of discretion in denying such a motion made after the jury had been sworn, counsel would not be available to represent the defendant for about two weeks, continuing the trial would have

caused significant disruption in a codefendant's case, and there was a "lack of either definiteness or urgency in defendant's reasons" for seeking to revoke his *Faretta* waiver. (*Id.* at pp. 194–195.)

Appellant argues that, in contrast to *Lawrence,* no significant disruption would result from a continuance in his case. Assuming the disruption would not have been as great as in *Lawrence,*[7] appellant has not shown abuse of discretion. In reviewing the trial court's ruling, no "one factor is necessarily determinative. The standard is whether the court's decision was an abuse of its discretion under the totality of the circumstances [citation], not . . . whether any one factor should have been weighed more heavily in the balance." (*Lawrence*, *supra,* 46 Cal.4th at p. 196.) The trial court expressly found that appellant previously waived his right to counsel for the purpose of delaying trial and implicitly found that he sought to revoke that waiver for the same reason—a factor not present in *Lawrence*. (See *ibid.* ["As far as the record shows, defendant was not trying to manipulate the system . . . ."].) These findings are supported by substantial evidence. We decline to find a trial court abuses its discretion by denying a substitution request made for dilatory purposes, simply because the resulting disruption would be less than that in *Lawrence.*

Appellant suggests that a focus of the trial court's ruling was blaming him for continuances that took place before his *Faretta* waiver, which appellant argues should not be attributed to him. To the contrary, the court focused on events beginning with appellant's *Faretta* motion, noting a different bench officer presided over earlier proceedings. The court's comments about multiple continuances appeared to be directed at the hardship to the witnesses.

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[7] After appellant pled guilty, the trial court heard testimony from the two victims on the issue of hardship had the trial been continued. This evidence was not before the trial court when it denied appellant's motion and we do not consider it. (*People v. Ybarra* (2016) 245 Cal.App.4th 1420, 1433 ["a reviewing court's determination of whether a trial court has abused its discretion . . . must be based upon the facts before the court at the time of the ruling."].) In any event, it is not necessary to our analysis of the issue.

Finally, to the extent appellant argues he could not effectively represent himself at trial, we reject the contention. As an initial matter, as discussed above, appellant was amply warned by the trial court before his *Faretta* waiver. "Because defendant had been fully advised before he chose self-representation, his later change of mind properly bore less weight in the trial court's discretionary decision on the revocation request." (*Lawrence, supra,* 46 Cal.4th at pp. 195–196.) Moreover, a "defendant's asserted ineffectiveness at self-representation does not demonstrate an abuse of discretion. Defendant was untrained in the law and may not have been especially experienced in court procedures, but the same could be said of many, if not most, in propria persona criminal defendants. That defendant's defense would have been more effectively presented (or a better sentence obtained through a negotiated plea) had he been represented is likely. But if that fact were determinative, virtually all self-representing defendants would have the right to revoke their counsel waivers at any time during trial. That is not the law." (*Id.* at p. 196.)

III. *Motion to Withdraw Guilty Plea*

Finally, appellant contends the trial court erred by denying his motion to withdraw his guilty plea. We disagree.

A. *Additional Background*

Appellant's motion argued his plea "was made under duress resulting from the court's denial of two motions to continue trial made in January 2018 and his motion to withdraw the *Faretta* waiver and allow retained counsel to take over the case." Appellant submitted a declaration in support of the motion, averring that "Communication from the jail with my investigator was difficult, making timely completion of the needed investigation tasks very hard," and "As the trial date approached, it became clear I could not get the needed work done in time. For example, I had to request legal research materials and then wait (sometimes for weeks) for the material to come back to me at the jail." He further averred that, following the denial of his December 2017 continuance request, "I realized that I was not going to be able to do the work needed on my own." Following the denial of his motion to substitute counsel, appellant "was overwhelmed,"

"did not have the needed witnesses interviewed or subpoenaed," and "was left with zero hope of defending myself at trial," resulting in his guilty plea.

At the hearing on appellant's motion, his investigator testified. The information appellant gave him about witnesses was "really vague," and out of the approximately 20 names appellant provided, the investigator only made contact with two or three. Appellant also testified at the hearing. He pled guilty because "I didn't have a choice," explaining, "I didn't have any witnesses for my trial, I had nobody subpoenaed, the investigation work wasn't done, and I was not prepared to go to trial." He also testified he started trying to obtain private counsel "after I ran into problems with the last public defender"; his efforts were "through my mom, and I was writing her letters that were disappearing from the jail"; and when he "finally did get through to her, she helped me get an attorney."

The court noted appellant was basically "revisit[ing] the continuance motions and then us[ing] the denial of the continuance motions to argue that the defendant was under duress and, therefore, entered his plea under duress and should be entitled to withdraw it for that reason." The court noted that "the Public Defender's Office was ready to try the case almost a year before it actually went to trial" when "the defendant simply refused to cooperate with or talk with his lawyer . . . . And it was set for trial in a few days." The court further noted that "neither [appellant] nor, for that matter, has current counsel provided anything to the Court that shows what some alleged witness would, should, or might be able to say that would be material to the case," and therefore "there isn't anything that's been provided to the Court up to this time that would lead me to believe that there's any specific evidence that would benefit [appellant] from any specific witness." Finally, the court noted the witnesses had been "subpoenaed to come to court repeatedly over a period of years . . . and putting them through having to prepare for trial over and over and over again is -- is cruel." The court found that appellant "could have participated in his trial. I think he could have cross-examined witnesses. I think he knows all the information that he needs to know or that anyone possibly could in order to cross-examine the witnesses in this case," although he "would have been much better

served being represented by a lawyer. But I think he played it out and he spun the system to the very end. And then when he wasn't able to postpone it any further, he made a deal with the D.A."

B. *Analysis*

"A decision to deny a motion to withdraw a guilty plea ' "rests in the sound discretion of the trial court" ' and is final unless the defendant can show a clear abuse of that discretion. [Citation.] Moreover, a reviewing court must adopt the trial court's factual findings if substantial evidence supports them." (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254.)

Appellant's argument on this issue rests entirely on the trial court's denial of his motion to substitute counsel and continue the trial, a decision we have found within the trial court's discretion. Accordingly, we also find the trial court did not abuse its discretion in denying appellant's motion to withdraw his plea.[8]

DISPOSITION

The judgment is affirmed.

[8] Because we have found no trial court error, we need not address whether, as the parties dispute, appellant was prejudiced by any error.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BURNS, J.

(A154381)